

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michele Armstrong	:	
	:	
v.	:	C-2018-3004052
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Michele Armstrong for her failure to serve her discovery requests and witness information upon Respondent by January 14, 2019 and March 5, 2019, respectively, in violation of an Interim Order dated November 30, 2018; her failure to serve full and complete discovery responses upon Respondent and file a certificate of service by April 5, 2019, in violation of an Interim Order dated March 13, 2019; her failure to serve full and complete discovery responses and witness information upon Respondent by June 7, 2019, in violation of an Interim Order dated May 23, 2019; and her failure to file a status report by July 24, 2019, in violation of an Interim Order dated July 5, 2019.

**HISTORY OF THE PROCEEDING**

Michele Armstrong (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on July 24, 2018, objecting to the installation of a smart meter at her residence at 1715 Firehouse Lane, Upper Black Eddy, Pennsylvania 18972 (service location), due to health,

safety, financial, privacy, and security concerns. As relief, Complainant requested she be permitted to keep her current analog meter.

On September 5, 2018, Respondent filed an Answer and New Matter to the Formal Complaint. Respondent admits that it provides residential retail electric service to Complainant at the service location. Respondent avers that Complainant has refused to allow the Company access to the Company's meter in order to install a smart meter, which constitutes legal grounds to terminate service to the service location. Respondent denied the remaining material allegations set forth in the Complaint. Respondent further avers it is required by Act 129 of 2008 (Act 129) to install a smart meter. Respondent essentially denied the remaining material averments set forth in the formal complaint. Respondent further avers that its Smart Meter Deployment Plan (SMP), which was approved by the Commission, contemplates the deployment of approximately 584,000 smart meters beginning in January of 2016 through mid-2019 and includes all customers. Respondent avers that neither its tariff, Act 129 or its SMP permits the Company to forbear from the smart meter installation requirement or enable the Commission or Company to permit the opt-out of smart meter installation or delay installation in contradiction to the SMP. Respondent also requested that a prehearing conference be scheduled in this proceeding.

In its New Matter, Respondent argued the Complaint should be dismissed, because it is required by Act 129 and its SMP to install a smart meter at the service location; neither Act 129 nor the SMP permit Complainant to opt-out of smart meter installation; and the Commission is unable to grant the relief requested by Complainant.

On September 5, 2018, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request to opt-out of smart meter installation is not legally recoverable and Complainant failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the installation of the smart meter at the service location. Respondent further averred it is required by Act 129 and its SMP to install a smart meter at the service location, and the Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. Respondent argued a hearing is not in

the public interest and the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

On September 25, 2018, Complainant requested an extension of time to file a response to Respondents Answer and New Matter and/or Preliminary Objections.

On September 28, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to the undersigned.

On October 5, 2018, an Interim Order was entered granting Complainant's Petition for Extension of Time to Reply to Respondent's Answer and New Matter and Preliminary Objections until October 31, 2018.

On October 25, 2018, Complainant requested a second extension of time to file a response to Respondent's Answer and New Matter and/or Preliminary Objections.

On November 1, 2018, an Interim Order was entered granting Complainant's Second Petition for Extension of Time to Reply to Respondent's Answer and New Matter and Preliminary Objections no later than November 30, 2018. No Reply was filed by Complainant.

On November 30, 2018, concurrent Interim Orders were entered; denying Respondent's Preliminary Objections; and establishing an initial litigation schedule which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding. Parties were ordered to, *inter alia*, provide the names, addresses, and written summaries of the expected testimony for each witness (witness information) to the other party by January 14, 2019; and to conclude discovery by March 5, 2019.

On January 14, 2019, Respondent provided notice and summaries of testimony for its factual and expert witnesses upon Complainant.

On January 16, 2019, Respondent filed a certificate of service regarding its service of Interrogatories and Requests for Production of Documents (discovery requests) upon Complainant. Objections were due by January 26, 2019, and responses were due by February 5, 2019.

On February 19, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring that it had not received any response to its discovery requests. The Motion to Compel contained a Notice to Plead, requiring Complainant to file a response within five days of service. Complainant did not file a response to the Motion to Compel.

On March 13, 2019, an Interim Order was entered granting Respondent's Motion to Compel and ordering Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel and file a certificate of service with the Commission's Secretary no later than April 5, 2019.

On April 22, 2019, an Interim Order was entered scheduling a prehearing conference for May 15, 2019 at 11:30 a.m.

On April 24, 2019, Respondent filed a Motion to Dismiss Complaint of Michele Armstrong for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to comply with the interim Order dated November 30, 2018, requiring witness information by January 14, 2019; and her failure to provide responses to Respondent's discovery requests by April 5, 2019, in violation of the March 13, 2019 Interim Order. Respondent averred Complainant, at no point, contacted Respondent to discuss the discovery requests. Respondent argued the Complaint should be dismissed in its entirety, because Complainant's failure to respond to the discovery requests demonstrates Complainant's lack of cooperation and willingness to participate in the proceeding as required by the Commission's regulations.

On May 15, 2019, the prehearing conference was held as scheduled, all parties were in attendance and participated. At the prehearing conference Complainant was advised her deadline to respond to the Motion to Dismiss was extended to May 22, 2019.

On May 22, 2019, Complainant filed a response to the Motion to Dismiss, stating she was not familiar with the Commission's procedures and did not want her case dismissed.

On May 23, 2019, an Interim Order was entered holding the Motion to Dismiss in abeyance and extending the deadlines set forth in the November 30, 2018 Interim Order. Of note, Complainant was ordered to provide full and complete responses to Respondent's Discovery Requests no later than June 7, 2019. Additionally, the Parties were ordered to provide witness information no later than June 7, 2019. Complainant did not file responses or provide witness information.

On July 5, 2019, an Interim Order was entered requiring the Parties to file a status report by July 24, 2019. Respondent filed a status report on July 26, 2019; Complainant did not file a status report.

On July 8, 2019 Respondent filed an Amended Motion to Dismiss averring, Complainant repeatedly failed to comply with numerous Interim Orders, to respond to discovery requests and to exchange witness information. The Amended Motion to Dismiss included a Notice to Plead. No responsive pleading was filed by Complainant.

As of the date of this Initial Decision, Complainant has not provided a status report identifying the dates which she and any witness would be available for a hearing and has not filed certificates of service regarding her service of discovery responses or witness information upon Respondent.

The record closed on September 26, 2019, by Interim Order as the matter was ripe for a decision on the Motion to Dismiss and Amended Motion to Dismiss filed by Respondent.

## FINDINGS OF FACT

1. Complainant is Michele Armstrong.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 1715 Firehouse Lane, Upper Black Eddy, Pennsylvania 18972.
4. On July 24, 2018, Complainant filed a Complaint against Respondent, objecting to the installation of a smart meter at her residence due to health, safety, financial, privacy, and security concerns, as relief, Complainant requested she be permitted to keep her current analog meter.
5. On September 5, 2018, Respondent concurrently filed an Answer and New Matter to the Complaint, averring that Respondent was required to install a smart meter at the service location, and Preliminary Objections, arguing that Complainant failed to state a claim upon which the Commission can grant relief and failed to allege a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.
6. By letters dated September 28, 2018 and October 25, 2018 Complainant requested extensions of time to file a response to Respondent's Answer and New Matter and/or Preliminary Objections (extension of time to respond).
7. On November 1, 2018, an Interim Order was entered granting Complainant's second request for an extension of time to respond, directing Complainant to file her responses no later than November 30, 2018.
8. On November 30, 2018, concurrent Interim Orders were entered, denying Respondent's Preliminary Objections and establishing an initial litigation schedule setting forth

deadlines for the identification of witnesses no later than January 14, 2019 and discovery no later than March 5, 2019.

9. On January 14, 2019, Respondent provided notice and summaries of testimony for its factual and expert witnesses upon Complainant.

10. Complainant did not provide the required witness information.

11. On January 16, 2019, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant.

12. On February 19, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring that Complainant had not served any response to the discovery requests.

13. On March 13, 2019, an Interim Order was entered granting Respondent's Motion to Compel and ordering Complainant to provide full and complete responses to the Respondent's discovery requests and file a certificate of service with the Commission's Secretary no later than April 5, 2019.

14. On April 24, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to comply with the November 30, 2018 Interim Order requiring Complainant to provide witness information by January 14, 2019, and failed to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service by April 5, 2019, in violation of the Interim Order dated March 13, 2019.

15. On May 15, 2019, the prehearing conference was held, all parties were in attendance and participated, the Complainant was advised her deadline to respond to the Motion to Dismiss was extended to May 22, 2019.

16. On May 23, 2019, Complainant filed a response to the Motion to Dismiss, stating she was not familiar with the Commission's procedures and did not want her case dismissed.

17. On May 23, 2019, an Interim Order was entered holding the Motion to Dismiss in abeyance and extending the deadlines set forth in the November 30, 2018 Interim Order, ordering Complainant to provide full and complete responses to Respondent's discovery requests and provide witness information no later than June 7, 2019 .

18. Complainant did not provide discovery responses, nor did she provide any witness information by June 7, 2019.

19. On July 5, 2019, an Interim Order was entered requiring the Parties to file a status report by July 24, 2019, advising as to the compliance and status of the revised litigation schedule.

20. On July 26, 2019, Respondent filed a status report.

21. Complainant did not file a status report identifying a date which she and any witnesses would be available for a hearing.

22. On July 8, 2019, Respondent filed an Amended Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to provide witness information, serve full and complete responses to the discovery requests upon Respondent, and service certificates of service, in violation of Interim Orders dated November 30, 2018, March 13, 2019, May 23, 2019 and July 5, 2019.

23. Complainant did not file a response to the Amended Motion to Dismiss.

24. Complainant has not filed a certificate of service regarding her service of discovery responses or witness information upon Respondent.

25. Complainant did not settle or withdraw this matter.

### DISCUSSION

In its Motion to Dismiss and Amended Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant's failure to provide witness information and respond to discovery requests, in violation of Interim Orders dated November 30, 2018, March 13, 2019, May 23, 2019 and July 5, 2019. Respondent argues Complainant's actions demonstrate a consistent lack of cooperation and willingness to prosecute her Complaint as required under the Commission's regulations.

The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa.Code § 5.321(c). Generally speaking, the Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. As long as the information sought in a discovery request appears reasonably calculated to lead to the discovery of admissible evidence, a party may not object to the discovery request on the basis that the information sought will be inadmissible at a hearing. 52 Pa.Code § 5.321(c).

In this proceeding, Respondent is entitled to engage in discovery in order to obtain information that is relevant and material to the issues raised by Complainant, and it filed a certificate of service showing its service of discovery requests upon Complainant on January 16, 2019.

The Commission's regulations at 52 Pa.Code §§ 5.342(d) and (e) provide that a party must serve answers to interrogatories within twenty days of service and objections within ten days of service.<sup>1</sup> In this case, as directed by the November 30, 2018 Interim Order, March 13, 2019 and May 23, 2019 Interim Orders, Complainant's objections, if any, to the

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<sup>1</sup> It should be noted that Complainant was given multiple extended deadlines via numerous Interim Orders to provide discovery responses and witness information and failed to comply with any of the Orders.

discovery requests and her responses were due by March 5, 2019, April 5, 2019 and June 7, 2019, respectively.

In its Motion to Dismiss and Amended Motion to Dismiss, Respondent averred it had not yet received Complainant's witness information or discovery responses in violation of the November 30, 2018 Interim Order and the May 23, 2019 Interim Order.

The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

Complainant violated multiple Interim Orders issued in this case. As of the date of this Initial Decision, Complainant has not filed a certificate of service showing her service of full and complete responses to the discovery requests or her witness information upon Respondent, in violation of the Interim Orders entered November 30, 2018, March 13, 2019, May 23, 2019 and has not filed a status report in violation of the Interim Order entered July 5, 2019. Numerous deadline extensions were provided to Complainant in this proceeding giving her many opportunities to comply.

The Commission recently considered similar cases where a complainant filed a complaint objecting to the installation of a smart meter and subsequently failed to comply with an order requiring the complainant to exchange witness information and failed to comply with an order granting a motion to compel. *See Kimberly Beckmann v. Metropolitan Edison Company*, Docket No. C-2017-2613702 (Final Order entered April 11, 2019); *Diana Cook v. West Penn Power*, Docket No. C-3003051 (Final Order entered July 11, 2019); *Darlene Stanton v. Pennsylvania Electric Company*, Docket No. C-2018-3001144 (Final Order entered July 11, 2019); *B. Susanne Spohn v. Metropolitan Edison Company*, Docket No. C-2018-3001725 (Final Ordered entered August 8, 2019). In each of these cases, the Commission unanimously upheld the administrative law judge's decision to dismiss the complaint with prejudice. *Id.*

Both parties have due process rights that must be protected. Respondent attempted to gather information about Complainant's claims through discovery. Complainant has failed to engage by failing to respond to discovery. Complainant has denied Respondent the opportunity to prepare a defense to her claims. To proceed with this matter in these circumstances would result in the denial of Respondent's due process rights.

A hearing in this matter is not necessary or appropriate and is not in the public interest. Accordingly, the Complaint will be dismissed with prejudice. The dismissal of the Complaint with prejudice is consistent with recent Commission precedent.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa.Code § 5.321(c).
3. The Commission's regulations at 52 Pa.Code § 5.371 address the consequences of a party's failure to comply with the Commission's discovery regulations and provides that the Commission or the presiding officer may, on motion, make an appropriate order if a party fails to appear, answer, file sufficient answers, file objections, make a designation, or otherwise respond to discovery requests. 52 Pa.Code § 5.371.
4. The Commission's regulations at 52 Pa.Code § 5.372 provide that the presiding officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's regulations. 52 Pa.Code § 5.372.
5. The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support

dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

6. The Commission’s regulations specify certain sanctions that are available when a party fails to comply with an order of the Commission “as is just.” 52 Pa.Code § 5.372(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Amended Motion of Metropolitan Edison Company to Dismiss the Complaint of Michele Armstrong, at Docket No. C-2018-3004052, is granted.

2. That the Complaint filed by Michele Armstrong against Metropolitan Edison Company at Docket No. C-2018-3004052 is hereby dismissed with prejudice due to Complainant’s failure to comply with Interim Orders issued November 30, 2018, March 13, 2019, May 23, 2019 and July 5, 2019.

3. That the Secretary’s Bureau shall mark Docket No. C-2018-3004052 as closed.

Date: December 23, 2019

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/s/  
Jeffrey A. Watson  
Administrative Law Judge